Since there was doubt at the only real parade, i.e. that of photos, the second parade of individuals in regard to No. 3 is vitiated by the photographic parade, where there was failure to identify.

While identification by photograph before arrest is acceptable in law, it has always been held that once a man has been arrested the identification should be by personal inspection. If there is identification by photograph, the identification and the method by which it is held must be flawless. In this case both drawbacks to the identification exist.

In the case of the photographic identification, there was a circumstance, whether intentionally introduced or not, which Lim Geok Long might accept as a hint as to which of the three photos he should identify. He is an English-speaking and literate man and can read English. Of the ten photos presented for his inspection, there was one group of three which could be separated from the rest in that they bore the word Segamat and consecutive numbers. There was no other group of three among the ten, and it was three men the witness was seeking to identify. In my view, this is enough to vitiate the identification when the guilt or innocence of the accused rests solely on that.

In the second place, all three of the accused were at the time of identification by photograph in police custody, and their photographs disclose this fact. If the evidence of Inspector Mohamed Eusoff is correct, it was known that the three accused might be the men in this robbery and their photos were handed to the Inspector to show to Lim Geok Long in that connection. There appears to be no reason why a corporeal identification parade was not or could not be held in the ordinary way. I find it strange that this procedure was adopted on this occasion in regard to these three accused.

There is another matter in regard to which attention must be drawn. The three accused were formally arrested on warrants on 30th March and 1st April; each warrant was issued on 15th March, and, according to Inspector Mohamed Eusoff's evidence, on an information of robbery given by him to the Magistrate, yet none of these warrants bear on the body of the warrant any indication of the offence with which the man to be arrested is charged. In each case a typed piece of paper is attached to the warrant bearing the charge. The annexure is not authenticated by the Magistrate and could have been put on by any one at any time. The result is a licence to the police to arrest the men named in the warrants and charge them with any crime. Such a warrant is a misuse of legal powers and should never have been issued in that State by the Magistrate concerned.

I cannot but express my opinion that the investigation and production of this case up to trial has not reached that standard of efficiency which the State has a right to expect from its officers; there is a serious flaw in the identification procedure and a carelessness in regard to the issue of the warrants which it is desirable should not occur again.

The prosecution case depends solely on the uncorroborated evidence of Lim Geok Long and on his sole identification; that identification is open to criticism for the reasons I have set out. I cannot therefore hold that the prosecution have made out a case which would warrant a conviction and make it incumbent on me to put the accused to their defence. I therefore acquit and discharge all three accused.

Accused Acquitted.

YAP HENG MUN v. CHIEW SIANG KWANG.

[App. Civ. Juris. (Callow, J.) May 8, 1948]
[Malacca — Civ. App. No. 1 of 1948]

Landlord and Tenant — Increase of Rent (Restriction) Ordinance 1939 — Control of Rent Ordinance 1948 — Repeal of Ordinance — Effect on Pending Actions — Interpretation and General Clauses Ordinance, 1948.

This is an appeal from the decision of the District Court at Malacca.

The claim was for possession of premises sublet on a monthly tenancy which was duly determined by a legal notice to quit and for arrears of rent and mesne profits.

Proceedings were commenced on the 5th January 1948, and on the 31st January 1948 the Control of Rent Ordinance 1948 which replaced the Increase of Rent (Restriction) Ordinance 1939 came into force. On the 13th February 1948 the case came on for hearing. The question raised on appeal was whether the proceedings in the Court below should be governed by the new Ordinance or the old.

Held, that the new Ordinance did not interfere with the plaintiff's right acquired under the old Ordinance as there were no provisions in the New Ordinance sufficiently plain and clear to remove the presumption that the rights of litigants in proceedings in progress should not be disturbed.

Appeal allowed and case remitted to the Court below with direction that the proceedings be continued and determined in accordance with the provisions of the old Ordinance.

Cases referred to :—

(1) *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff,* (1948) M.L.J. 63.

(2) *Public Prosecutor v. Annuar bin Ali,* (1948) M.L.J. 38.

(3) *Lewis v. Hughes,* (1916) 1 K.B. 831.
(4) *In re a Debtor,* (1936) Ch. D. 237.
(5) *Hamilton Gell v. White,* (1922) 2 K.B. 422.
(6) *Moakes v. Blackwell Colliery Co.,* (1925) 2 K.B. 64.
(7) *Briggs v. Dryden,* (1925) 2 K.B. 667.
(8) *Stead v. Carey,* 1 C.B. 493.
(9) *R. v. Vine,* L.R. 10 Q.B. 195.
(10) *Croxford & Ors. v. Universal Insurance Co.,* (1935) 2 K.B. 409.
(11) *Hitchcock v. Way,* 6 A & E 945 at p. 951.
(12) *London Fan & Motor Co. v. Silverman,* (1942) 1 A.E.R. 307.
(13) *National Real Estate & Finance Co. v. Hassan,* (1939) 2 K.B. 74.
(14) *In re Hartland,* (1911) 1 Ch. p. 466.
(15) *In re Joseph Suche & Co.,* (1875) 1 Ch. D. 48, 50.

CIVIL APPEAL.

T. E. Atkinson for Appellant.

W. H. Salt for the Respondent.

Callow, J. : — This is an appeal from the Court of the District Judge, Malacca against the judgment delivered on the 27th of February, 1948, consequent upon the decision on the preliminary point of law raised earlier in the proceedings.

The claim was :—

1. An order for possession of three quarter space on the ground floor of premises known as No. 86 Newcome Road, Malacca, formerly sub-let by the plaintiff to the defendant on a monthly tenancy, which tenancy had been duly determined by a legal notice to quit.
2. The sum of $105/- being arrears of rent due under the defendant's statutory tenancy from 1st October 1947 to 31st December 1947 at a monthly rental of $35/-.
3. Mesne profits for the defendant holding over the said premises from 1st January 1948 till the date of judgment at the rate of $35/- per month.

The plaintiff-appellant had appeared before the Rent Assessment Board, Malacca, and obtained on the 11th of September, 1947, permission to apply to the Court for an ejectment order not before the 1st of January, 1948. Hence the proceedings in the Court below were instituted on the 5th of January, 1948.

The case came first before the Court on the 30th of January, 1948, when it was adjourned for hearing on the 13th of February, 1948. Argument was heard and the decision which preceded the judgment was delivered on the 27th of February, 1948. The judgment dismissed paragraphs 1 and 3 of the claim, and it is on this account that the appeal was lodged.

The grounds of appeal are :—

(a) The learned District Judge was wrong in law in holding that the repeal in and for the Settlement of Malacca of the Increase of Rent (Restriction) Ordinance 1939 of the Straits Settlements on 31st January 1948 and the coming into force on that day of the Control of Rent Ordinance 1948 of the Federation of Malaya in any way affected or interfered with the rights of the Plaintiff to continue this action which had been instituted in the District Court prior to the 31st January 1948 and to obtain possession of the premises in question against the Defendant in such action.

Your Petitioner humbly submits that these rights had been acquired by him and had accrued under the said Increase of Rent (Restriction) Ordinance 1939 of the Straits Settlements prior to the date of the repeal of that Ordinance and that the repeal of that Ordinance and the enactment of the new Ordinance did not interfere with the rights which he had previously acquired under the repealed Ordinance.

(b) The learned District Judge was wrong in law in holding that the repeal of the said Increase of Rent (Restriction) Ordinance 1939 of the Straits Settlements as aforementioned and the coming into force of the said Control of Rent Ordinance 1948 of the Federation of Malaya prior to the date of the trial of this action in any way affected the rights and position of the parties in these proceedings which had been properly commenced in the District Court prior to the repeal of the said Increase of Rent (Restriction) Ordinance 1939 of the Straits Settlements and the coming into force of the said Control of Rent Ordinance 1948 of the Federation of Malaya. Your Petitioner will humbly submit that these proceedings should have been continued and adjudicated upon in all respects as if the Increase of Rent (Restriction) Ordinance 1939 had continued to be in force at the date of the trial of this action.

Thus it will be readily observed that the issue is whether the proceedings before the learned District Judge were governed by the Control of Rent Ordinance, 1948, (hereinafter called the New Ordinance) which came into force on the 31st of January, 1948, or whether such proceedings should have been in accordance with the provisions of the repealed Increase of Rent (Restriction) Ordinance, 1939 (hereinafter called the Old Ordinance).

It would appear that if the hearing had been determined on the date the cause came first before the Court below, namely on the 30th of January, 1948, this appeal could not have arisen, for the operative date of the New Ordinance was not until the day following.

At first the argument proceeded on the assumption that the Interpretation Ordinance of the Straits Settlements (Cap. 2) is the same as the Interpretation and General Clauses Ordinance, 1948, of the Malayan

Union, but discovery of the differences to which I shall allude later, caused considerable further argument.

Counsel for the plaintiff-appellant *on the premise of similarity* relied on the recently decided case of *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff*[1], and although this Court is not bound by that decision, despite the submission citing Swinfen Eady J., *In re Hartland*[14], it is manifest that unless variance was fundamental (as illustrated in the case of the *Public Prosecutor v. Annuar bin Ali*[2]), the judgment of Brown J., would be followed.

The relevant portion of the judgment in *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff* (cited *supra*) reads as follows :—

> Ground (e)
>
> The learned District Judge did not take into consideration the fact that the Increase of Rent (Restriction) Ordinance, 1939, was repealed and replaced by the Control of Rent Ordinance, 1947.
>
> These proceedings were started when the Increase of Rent (Restriction) Ordinance, 1939, was still law. On the 16th September, 1947 when the case came on for trial, that Ordinance had been repealed by the Control of Rent Ordinance, 1947. Mr. C. J. Koh contends that the learned District Judge should have disregarded the provisions of section 8(c) of the 1939 Ordinance (which was then repealed) and should have applied the provisions of section 14 of the 1947 Ordinance (which was then in force). In my opinion section 5(d)(iv) of the Interpretation Ordinance supplies the answer to that contention. By that enactment the repeal does not affect any legal proceeding in respect of any right or remedy incurred under the repealed Ordinance. Mr. C. J. Koh contends that the respondent incurred no right until the date of the judgment on the 16th of September. But I think the true position is that the respondent always had his common law right to recover possession, which right he was prevented from enforcing by the 1939 Ordinance unless he could show that under section 8(d) of that Ordinance he reasonably required the premises for himself. To that end he instituted these proceedings when that Ordinance was still law; and section 5(d)(iv) of the Interpretation Ordinance allowed his legal proceeding to be continued as if the repealing Ordinance had not been passed.

Counsel for the defendant-respondent argued that my learned Brother in the judgment of *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff* (cited *supra*) dealt only with the side of the landlord, to the disregard of the view point of the tenant, but I do no find substance in this submission; I am confident that the Court in the *Basrai Bros.* case (cited *supra*) gave full consideration to all parties, even though the judgment omits precise mention of the tenant.

But the judgment was also attacked on stronger grounds, which urged that a contrary intention does appear in consequence of the change of the tenant's status under the New Ordinance.

Before going further it is necessary to set out the difference between section 5 of the Interpretation Ordinance of the Straits Settlements and section 13 of the Interpretation and General Clauses Ordinance, 1948, of the Malayan Union. I have omitted from the former Ordinance certain sub-sections which have their counterpart elsewhere in the latter, and for clarity and brevity set out the pertinent portions, and in the third column* is the similar section in the Interpretation Act 1889 of Parliament.

The Interpretation and General Clauses Ordinance 1948.

13. Where a written law repeals in whole or in part any other written law, then, **unless the contrary intention appears**, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any written law so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

The Interpretation Ordinance, Straits Settlements.

5(d). Where any written law repeals wholly or in part a former written law, such repeal shall not, **in the absence of any express provision to the contrary**, affect or be deemed to have affected—

(i) the past operation of or anything duly done or suffered under the repealed written law;

(ii) any right, liberty, privilege, obligation or liability acquired, imposed or incurred under the repealed law;

(iii) any offence committed, or any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed written law;

(iv) any investigation, legal proceeding or remedy in respect of any such right, liberty, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed.

The Interpretation Act, 1889.

38 (2) Where this act or any act passed after the commencement of the act repeals any other enactment, then **unless the contrary intention appears**, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

* The three enactments are given following one another, below. **Ed.**

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced and any such penalty, forfeiture, or punishment may be imposed, as if the repealing act had not been passed.

Thus it will be observed that while in the Interpretation and General Clauses Ordinance, 1948, and in the Interpretation Act of 1889, the words used are "unless the contrary intention appears", the expression upon which the judgment in *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff* (cited *supra*) is founded reads "in the absence of any express provision to the contrary".

It will, no doubt, be agreed that uniformity of the Interpretation and General Clauses Ordinance, 1948, and the Interpretation Ordinance of the Straits Settlements would be convenient, but for the purposes of this appeal it has to be considered whether the change in diction requires this Court to distinguish the judgment in *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff* (cited *supra*).

Counsel for the defendant-respondent compared in detail all the pertinent sections of the two Ordinances, but I think the substance of his argument may be largely confined to the differences of the two expressions referred to, and in particular to definition of the words "unless the contrary intention appears".

Quite a point was made for the defendant-respondent in reference to section 13(e) of the Interpretation and General Clauses Ordinance, 1948, where it was emphasised that if the appellant's argument was correct not only may legal proceedings be continued unaffected by the New Ordinance, but a *remedy* may be instituted; and the result would be for the two Ordinances to run side by side, which it was contended would be absurd. I am sure it is seldom the intention to allow remedies born under a repealed Ordinance to be *instituted* at a later date and after a repealing Ordinance has come into operation. It is a discursive deduction, but while giving it attention I must not intervert from my apprehension of the main point before the Court, that is to say whether litigation in process on the enactment of the New Ordinance should continue in accordance with the provisions of the Old Ordinance or to be subject to the New Ordinance.

Clearly the New Ordinance is intended to increase the rights of the tenant and correspondingly to reduce those of the landlord. Counsel for the defendant-respondent detailed several instances during the course of his argument.

Counsel for the plaintiff-appellant developed an able and interesting argument in which he said the Court should look at the repealing section (20 of the New Ordinance) as distinct from the rest of the Ordinance. His submission that the New Ordinance does two things is incontrovertible — by section 20 it repeals the Old Ordinance and by the other sections it brings into force new law. He then urged the Court to examine section 20 and to pronounce that in that section no contrary intention can be found to take the case out of section 13 of the Interpretation and General Clauses Ordinance, 1948.

Counsel for the defendant-respondent's contention is that the Court must look at the New Ordinance as a whole, and if, as he submitted, a contrary intention is an irresistible inference, then the sub-sections of section 13 of the Interpretation and General Clauses Ordinance, 1948, cannot operate. He pointed out that section 20 of the New Ordinance contained a proviso to continue operative certain appointments and subsidiary legislation made under the Old Ordinance, and had the intention been to preserve proceedings instituted but not concluded, then such provisions would have been inserted.

Now, as Brown J. said in *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff* (cited *supra*) the landlord always had his common law right to recover possession, but this right has been restricted by the legislature. At common law the repealing Ordinance would have wholly destroyed the appellant's rights, but section 13 of the Interpretation and General Clauses Ordinance, 1948, saves existing rights "unless the contrary intention appears" (*Lewis v. Hughes*[3].) Does the New Ordinance disclose a contrary intention and so remove existing rights?

Practically every Ordinance which repeals and replaces another Ordinance results in definite changes held by the Legislature to be necessary. To repeal and replace is of common usage, and the result is inevitably to affect the subject's rights and liabilities. Up till 1859 the law was established that unless *concluded* a cause instituted under a repealed Act was abrogated unless saved by a clause in the repealing Act.

But a succession of authorities may be cited to show that, following English law, where a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. Lord Wright (then M.R.) said *In re a Debtor*[4] citing Jessel M.R. *In re Joseph Suche & Co.*[15].

> It is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.

Further authority is of easy access in the *English and Empire Digest* Vol. 42, pages 706/7, paragraphs 1235 to 1242. There is a difference as regards procedural legislation, but in respect of an Ordinance such as the one under consideration (the New Ordinance) the presumption is that it does not annul rights already acquired. It deals with the future and not past events; it is prospective not retrospective; *nova constitutio futuris formam imponere debet non praeteritis.*

It may be convenient to set out a number of the cases cited on behalf of the appellant but it is not necessary to detail the examination of each one; the principle is established. The cases are :—

Lewis v. Hughes[3], *Hamilton Gell v. White*[5], *Moakes v. Blackwell*[6], *Briggs v. Dryden*[7], *In re a Debtor*[4].

The law is summarised at page 229 of the 9th Edition of *Maxwell* on Interpretation of Statutes :—

> **Pending Actions.** In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

Counsel for the defendant-respondent countered this argument by insistence that the *whole* of the Ordinance must be examined, and clear intention must be inferred from the further restrictions placed upon the landlord by the New Ordinance, and the change in status of the tenant.

I am not inclined to go the whole way with Counsel for the plaintiff-appellant and divide the Ordinance into two — the repealing section and the remainder. I agree that a tidy draftsman might include in the repealing section all provisions of a retrospective nature, but such provision may be found elsewhere in the Ordinance. On the other hand if every Ordinance which repeals and substitutes law differing from the Ordinance repealed — and this is an obvious corollary or the New Ordinance would be unnecessary — was looked at generally and as a whole, some intention contrary must appear, so making superfluous section 13 of the Interpretation and General Clauses Ordinance, 1948. Should the Court study the New Ordinance as a whole, and then if any intention is apparent contrary to the Old Ordinance, disregard section 13 of the Interpretation and General Clauses Ordinance, 1948; or must words unequivocal and manifest be demanded?

Nor is it possible to go the whole way with Counsel for the defendant-respondent and hold that because the New Ordinance gives greater protection to the tenant and restricts further the landlord therefore the contrary intention must appear to take away the effectiveness of section 13 of the Interpretation and General Clauses Ordinance, 1948.

In some instances the law has looked at legislation in toto, and given it restrospective operation (*Stead v. Carey*[8]; *R. v. Vine*[9]; *Croxford & Others v. Universal Insurance Co.*[10]), but said Lord Denman in *Hitchcock v. Way*[11] they have generally turned on the peculiar wording of particular Acts, which appeared to the Courts to compel them to give the law an *ex post facto* operation (*Broom,* 10th Edition pages 256/7).

Is the language of the New Ordinance of such force to demand similar construction?

Neither side could produce any local authorities for guidance, so it is necessary to consider whether there is any reason why the English authorities should not be followed. I have studied carefully the New Ordinance and it is silent on the matter of pending proceedings, so also seem the statutes upon which the decisions in the cited cases required decision.

Generally speaking there appears to have been some tendency to lean towards the workman rather than the employer, and the tenant rather the landlord; the more recent case of the *London Fan & Motor Co. v. Silverman*[12] was the other way and suggested hardship to the tenant, but the principle remains that language clear and unambiguous is required to invalidate proceedings already commenced.

Now although the differences between section 13 of the Interpretation and General Clauses Ordinance, 1948, and section 5 of the Interpretation Ordinance of the Straits Settlements have been shown, there seems no reason why section 13 of the Interpretation and General Clauses Ordinance, 1948, should not be compared and considered as one with the relevant section in the Interpretation Act 1889. It is conveniently set out in paragraph 761 on page 562 of the 31 Volume of *Hailsham,* and these appear almost identical.

Doing this I am impelled to follow decided reported cases. In so doing I have had regard to Counsel for the plaintiff-appellant's observation that a contrary view point would be at variance with nearly every reported English case on the subject, although this situation would not disturb me had I found it necessary to decide otherwise. I have read and considered many cases, and find that in those where the Courts have found a contrary intention, this has appeared in no unmistakable terms. The question I have to answer is whether there is anything in the New Ordinance which takes away the right of a landlord who has strictly complied with the Old Ordinance (*National Real Estate & Finance Co. v. Hassan*[13]).

I do not find that the Court should construe the New Ordinance as interfering with the appellant's right acquired unless it is clear that a contrary intention is indicated. (*Moakes v. Blackwell Colliery Co.*[6]). I agree that the New Ordinance changes the respective relationship and status of landlord and tenant, but there is not language sufficiently plain and clear to remove the prima facie presumption that the position of litigants in proceedings in progress should be disturbed.

In consequence the appeal is allowed. The judgment of the Court below in respect of paragraphs 1 and 3 of the statement of claim is set aside, and the action is remitted to the Court below with the direction that the proceedings be continued and determined in accordance with the provisions of the Increase of Rent (Restriction) Ordinance, 1939 (since repealed).

As regards costs, the appellant has succeeded, but as owing to a wrong assumption that the section 13 of the Interpretation and General Clauses Ordinance, 1948, was similar in all respects with section 5 of the Interpretation Ordinance of the Straits Settlements, which wrong assumption caused the re-opening of argument, the hearing occupied considerably longer than the day allocated, the appellant shall not enjoy costs assessed for a hearing exceeding one day.

I should conclude by adding that the whole of Counsel's argument is on record having been taken down by a stenographer whose services were made available by Counsel for the plaintiff-appellant and were much appreciated.

Appeal Allowed.

CHEW POH CHOO (f) v. CHUA KWONG POW.

[Orig. Civil Juris. (Laville, J.) May 26, 1948]
[J.B. — Originating Motion No. 10 of 1948]

Leases and Tenancies (Dispossessed Persons) Board Rules, r. 8 — Appeals from the Board — Appeal out of time — Special circumstances — Civil Procedure Rules, Order VI made under Civil Procedure Code, s. 531.

In this case an order for possession in favour of the Applicant — to be made effective within four months of the date of the order — was made on 7/12/47 by the Leases and Tenancies (Dispossessed) Board, Johore Bahru. The Respondent, however, continued occupation, and it was not until the 6th of May 1948, when he was served with a summons issued by the Applicant, that he applied for leave to appeal out of time and for a stay of execution in regard to the ejectment order until after the hearing of the appeal on the grounds, (1) that he failed to see his counsel in time and was misinformed by that counsel's clerk that no appeal lay from the order of the Board; (2) that a point of law arose.

Held, (1) that a mistake by counsel (and a fortiori his clerk) as to the effect of a rule is not ground for granting special leave to appeal and does not amount to special circumstances; (2) the fact that a point of law may be raised on appeal does not go to the question of whether an appeal out of time could be allowed and does not amount to a special circumstance.

Case referred to :—

(1) *Coles and Ravenshear,* 1 K.B. (1907) pp 5 — 8.

ORIGINATING MOTION.

C. H. Koh for Applicant.

A. N. Mitra for Respondent.

Laville, J. : — On 7.12.47, after hearing both parties, the Leases and Tenancies (Dispossessed Persons) Board for the Johore Bahru Town Board Area made an order for possession of 113, Jalan Trus, Johore Bahru, in favour of Chew Poh Choo (f), the order to be effective within 4 months of the date of the order as against Chua Kwong Pow the occupant.

On 16th December, 1947, Chew Poh Choo by letter notified Chua Kwong Pow that she would go into possession as soon as the premises were surrendered in the terms of the order and that alterations or damage made or done by the occupant must be put right before that date. No reply was received to this letter and on 4th April, 1948, a similar letter was again sent to Chua Kwong Pow without effect, and he continued in occupation.

On 6th May, 1948, Chua Kwong Pow was served with a summons issued by Chew Poh Choo under section 5 (4) of the Ordinance to appear on 22nd May in the District Court, and it was only after receipt of this summons that Chua Kwong Pow instructed